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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision: 22.12.2006.

Bal Krishan

...Petitioner

vs

Presiding Officer, Labour Court, Panipat, and another.

... Respondents.

CORAM: Hon'ble Ms. Justice Kiran Anand Lall.

Present:- Mr.Madan Pal,Advocate for the petitioner.
Mr.Tribhuvan Dahiya,Advocate, for respondent No.2.

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Kiran Anand Lall,J.

The petitioner-workman has challenged the award dated 22.11.1995 vide which relief of reinstatement in service was denied to him by the Labour court, on the ground that the industrial dispute was raised by him after a long and unexplained delay of over three years and the dispute had, thus, become non-existent by efflux of time.

In a nutshell, the facts of the case are that the petitioner-workman was appointed as helper, on daily wages, in the respondent-management, on 14.12.1981 and he continued to work as such upto 27.4.1987. Before the Labour court, his case was that after 27.4.1987 he could not attend to his duties for two months as his mother had fallen ill and he had to take her to the Medical College, Rohtak, where she was operated upon for a gallbladder stone. He claimed to have applied for leave, for this period. In the month of June 1987, he had reported back for duty but he was not allowed to join. And, ultimately, his services were terminated, without serving any notice or giving retrenchment compensation, under Section 25-

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F of the Industrial Disputes Act, 1947 (for short "the Act"). Termination of services, which was done without serving charge-sheet or holding enquiry, was alleged to be illegal and unjust, and it was prayed that he be reinstated in service, with full back wages. The respondent-management pleaded that he did remain employed, as a daily rated worker, from 14.12.1981 to 27.4.1987 but had, thereafter, absented from duty, without applying for leave or giving even oral information to the concerned officer. The story regarding the illness of his mother had been found false, as in the claim statement, the stand taken was that his mother was operated upon in the Medical College, Rohtak, whereas the medical certificate furnished was regarding her operation having been performed at Karnal, in a private nursing home. Before terminating his services, a memo dated 4.6.1987 was sent to him for joining duty. But, he neither reported for duty nor even sent any response thereto. As per the standing orders, "wilful absence" for a period of more than six months amounted to abandonment of service. Therefore, it was pleaded, it was not obligatory for the management to follow the procedure laid down in Section 25-F of the Act. Objection was also taken up regarding the unexplained long delay, in raising the industrial dispute.

Vide the award dated 22.11.1995, the Labour court held the termination as illegal but denied the relief of reinstatement as the dispute was raised after a long and unexplained delay of over three years. The petitioner challenged it in this petition, on 2.7.1997, pleading that it was illegal and was liable to be set aside as the Act does not prescribe any period of limitation for raising an industrial dispute or making reference with regard thereto.

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The respondent-management put in appearance and contested the petition, by filing a written statement, pleading therein that the petitioner remained absent from duty from 28.4.1987 to 29.11.1987. The respondent-management had even advised him, vide letter dated 4.6.1987 (Ex.M-23 on Labour court file), to resume duty (within seven days) or else his services would be terminated. Still, he neither joined nor gave any response to the latter. However, on 29.11.1987, he made a request (for the first time) for joining duty, but that was declined by the management as he had abandoned his services by absenting himself for a period of seven months, without any intimation. The explanation furnished by him regarding his absence, was also found false. He furnished a medical certificate regarding his mother's illness which showed that she had remained under the treatment of Dr.Gian Chand Gupta, a private medical practitioner, at Karnal, for multiple stones in gallbladder, whereas in the affidavit furnished by him on 16.11.1987, his stand was that his mother was operated upon for Kidney stone, and that, too, in the Civil Hospital at Karnal. The version given in the demand notice, was still different. In that he had mentioned that his mother was treated (during the period under reference), at Medical College, Rohtak. The respondent also pleaded that being a daily wager, he was not entitled to any leave, and was entitled to only one day weekly rest. Besides, it was pleaded that the Labour court had rightly answered the reference against him, on the ground of unexplained delay of more than three years, as he had raised the dispute after a lapse of more than three years.

According to the learned counsel for the petitioner-workman, even in a case of belated claim, reinstatement in service cannot be denied to a workman and only his back wages can be withheld, whereas, as per the

learned counsel for the respondent-management, if the dispute is raised for the first time, after a period of three years, the workman is not entitled to any relief.

I have heard both sides.

The petitioner, admittedly, approached the appropriate authority, by way of a demand notice, after a lapse of over four years, and he gave no explanation for this long delay. Learned counsel appearing for him, however, contended that even unexplained delay of a long period in raising an industrial dispute, would not dis-entitle a workman to the relief of reinstatement. He referred to a judgment of this court reported as 2006 (1) SCT 25 *Improvement Trust, Amritsar vs. The Presiding Officer and another*, and two judgments of the Apex Court reported as 1999 (2) SCT 667 *Ajaib Singh vs. The Sirhind Co-op. Marketing-cum-Processing Service Society Limited*, and 2000 (1) SCT 353 *Mahavir Singh vs. U.P.State Electricity Board*, in this connection. On the other hand, learned counsel for the respondent-management relied upon a Division Bench judgment of this court reported as 1996 (7) SLR 446 *State of Punjab vs. Kali Dass and another*, and two pronouncements of the Apex Court reported as JT 2006 (6) SC 50 *Chief Engineer, Ranjit Sagar Dam and another vs. Sham Lal* and JT 2006 (6) SC 142 *Assistant Engineer, C.A.D. Kota vs. Dhan Kunwar*, to support his contention that though no limitation period is prescribed for raising an industrial dispute, yet it has to be raised at the earliest, and, if it is not so raised, it (dispute) virtually becomes non-existent and the workman cannot get any relief.

I have carefully gone through the said pronouncements. The point was thrashed by a Division Bench of this court in *State of Punjab vs.*

Kali Dass and another (supra), wherein it was held as under:-

> *"No doubt there is no limitation provided under the Industrial Disputes Act to raise an industrial dispute but can it be said that it can be raised at any time and that too without any explanation. Is a workman at a better footing or at a higher pedestal than a civil servant or an employee of any other organisation? If the services of an employee of the latter category are dispensed with, they are required to challenge the same in the Civil Court within a period of three years. Even for the writ petition, the Supreme Court has observed that three years is a reasonable period within which the aggrieved party must approach to challenge termination as that is the period for filing a civil suit. According to us, the workman cannot be allowed to approach the Labour Court after more than three years of the termination of service."* (emphasis added).

The Apex Court also held the same view, in the *Assistant Engineer, C.A.D. Kota's* and the *Chief Engineer, Ranjit Sagar Dam and another*'s cases (both supra), after discussing the earlier pronouncements in the matter of unexplained delay of over three years in raising an industrial dispute. However, no judgment of the Apex Court, on the point, was brought to the notice of this court when it decided *the Improvement Trust, Amritsar*'s case (supra). Therefore, the view taken therein is not inconsonance with the view of the Apex Court. No doubt, in *Ajiab Singh*'s case (supra), the Apex Court had held that the High Court cannot lay down a period of limitation, for raising an industrial dispute. But, the factual position in that case, as

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clarified in 2000 (3) SLR 20 *Sukhbir Singh vs. Gurgaon Central Cooperative Bank Limited*, was totally different. In that case, the plea regarding delay had not been raised (by the management), before the Labour court, and the sole objection taken was regarding the jurisdiction of Labour court to adjudicate upon the dispute regarding the termination of services of the workman. It was in this background, that the Apex Court took the said view, observing that had the plea of delay been raised before the Labour Court, the workman would have been in a position to show the circumstances preventing him in approaching the court at an earlier stage. This is, however, not the position in the instant case, wherein the management had raised a specific objection regarding delay and the Labour Court had examined the matter, also. In any case, even otherwise, it is the view taken by the Apex Court,later in point of time, in *Assistant Engineer, C.A.D. Kota's* and the *Chief Engineer, Ranjit Sagar Dam and another*'s cases (both supra), which would hold the ground, as against the earlier view taken in *Ajaib Singh*'s (supra) and *Mahavir Singh*'s (supra) cases.

So, as per the above mentioned position of law, since the petitioner had raised the industrial dispute after an unexplained long delay of over four years, he was not entitled to any relief. The Labour Court had not, therefore, committed any illegality, by declining him the relief of reinstatement. The petition shall, accordingly, stand dismissed as being without any merit, leaving parties to bear their own costs.

22.12.2006. (Kiran Anand Lall)
vs. Judge.